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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 12 2010
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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences, the arts or business. The petitioner is a community sports facility that seeks to employ the beneficiary as an athletic director who will "[m]anage and coach community soccer programs with emphasis on the needs of female athletes." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner has not established that the beneficiary qualifies for classification as an alien of exceptional ability in the sciences, the arts or business, or that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel asserts that difficulties in delivering a request for evidence (RFE) affected the petitioner's due process rights, because the petitioner did not have sufficient time to prepare an adequate response to the RFE. After the RFE, the petitioner had two additional opportunities to supplement the record: first, with the initial appeal, and then in a subsequent brief. We find, therefore, that the petitioner has had ample opportunity to submit evidence in support of the petition.

The petitioner submits a brief, new exhibits, and copies of previously submitted materials. We shall consider these materials further below.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The first issue under consideration is whether the beneficiary qualifies for classification under section 203(b)(2) of the Act, either as a member of the professions holding an advanced degree or as an alien of exceptional ability in the sciences, the arts, or business. When the petitioner filed the petition on February 27, 2008, [redacted] then director of the petitioning organization, stated that the beneficiary "qualifies as an advanced degree professional under 8 C.F.R. 204.5(k)(3)(i)(B). She is also an alien of exceptional ability." Despite this unambiguous language, in later correspondence dated March 10, 2009, [redacted] stated: "it appears that our discussion regarding [the beneficiary's] qualifications for the category requested may have been unclear. . . . We are not arguing that this position requires an advanced degree professional. Our contention is that [the beneficiary] is an alien of exceptional ability." We acknowledge the petitioner's concession that the beneficiary does not qualify as a member of the professions holding an advanced degree, and will not devote further space to that issue.

Turning to the issue of exceptional ability in the sciences, the arts or business, U.S. Citizenship and Immigration Services (USCIS) construes athletics to fall within the arts for the purposes of exceptional ability classification. Now we must determine whether the beneficiary shows exceptional ability in her field.

The USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii) states that, to show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:

> (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
>
> (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
>
> (C) A license to practice the profession or certification for a particular profession or occupation;
>
> (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
>
> (E) Evidence of membership in professional associations; or
>
> (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

The petitioner initially claimed that the beneficiary satisfied three of the six standards at 8 C.F.R. § 204.5(k)(3)(ii). We will discuss these claims in detail below. On January 29, 2009, the director issued an RFE, instructing the petitioner to "[s]ubmit any additional evidence to establish that the beneficiary possesses 'exceptional ability.'" In response, the petitioner repeated previous claims, and also noted the "comparable evidence" clause at 8 C.F.R. § 204.5(k)(3)(iii). We will address the "comparable evidence" claim after we discuss the standard criteria.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria at 8 C.F.R. § 204.5(k)(3)(ii). Qualifications possessed by all or most workers in a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every qualified physician has a college degree and a license or certification, but it defies logic to claim that every physician therefore shows "exceptional" traits.

The petitioner has claimed that the petitioner meets the following three regulatory requirements.

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(A)

As noted previously, the petitioner originally discussed only two of the six standards listed at 8 C.F.R. § 204.5(k)(3)(ii). In a different context, [redacted] also noted that the beneficiary "received a Bachelor's degree in Business [Administration] from Berry College." A letter from a college official specified that the beneficiary earned that degree "with a concentration in Management." 8 C.F.R. § 204.5(k)(3)(ii)(A) calls for an official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. The petitioner did not explain how the beneficiary's degree in business administration relates to her claimed exceptional ability as an athletic director. Likewise, the petitioner did not show that the beneficiary's degree establishes a degree of expertise significantly above that ordinarily encountered among athletic directors.

The director denied the petition on May 20, 2009, stating that the petitioner had not shown that the beneficiary's degree distinguished her from other athletic directors. On appeal, counsel states that the director impermissibly imposed a requirement not found in the regulations, because "[n]owhere does the regulation mention that the degree must be unusual or that the degree itself must be evidence of exceptional ability." Counsel's argument rests on a reading of 8 C.F.R. § 204.5(k)(3)(ii)(A) in isolation. In the context of the broader regulation, it is apparent that the evidence must establish a degree of expertise significantly above that ordinarily encountered in a given occupation.

Counsel asserts that the regulations do not require "that each individual piece of evidence must alone clearly demonstrate exceptional ability." By the nature of the regulations, no one piece of evidence could "clearly demonstrate exceptional ability" because such a finding must rest on a variety of evidence. Nevertheless, each piece of evidence must point toward such a conclusion. If the regulatory standards are treated only as a sterile checklist, we arrive at the self-contradictory conclusion that an alien is "exceptional" by virtue of possessing a series of credentials or qualifications that, individually, are common within the field.

Furthermore, the petitioner must establish that the degree relates to the area of claimed exceptional ability. It is not self-evident that the beneficiary's degree in business administration, with a concentration in management, relates to her intended career as an athletic director and soccer coach.

The petitioner has not established that the beneficiary's academic background relates directly to her position as an athletic director and soccer coach, or that her education contributes to exceptional ability in her field. We affirm the director's finding that the petitioner has not satisfied the requirements of 8 C.F.R. § 204.5(k)(3)(ii)(A).

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C)

[redacted] stated that the beneficiary "holds a U.S. Soccer Federation A Coaching License – the highest level, nationally certified license in the sport in the United States... She is one of only two women in the state of Arizona to hold such licensure and one of only approximately 150 female soccer coaches in the U.S. to achieve this level" (ellipsis in original).

An exhibit list included with the initial filing listed a copy of the license among the submissions. The petitioner did not, however, claim to have submitted any background documentation from the U.S. Soccer Federation (USSF) to establish the significance or scarcity of the USSF A Coaching License.

The director, in denying the petition, stated that the record did not contain a copy of this license or any background documentation to confirm its significance. Likewise, we have been unable to locate a copy of the license among the documents in the petitioner's initial submission.

On appeal, the petitioner submits a copy of the license. Counsel accuses the director of having "lost or discarded" this initial evidence. We cannot determine how the license came to be missing from the record, but we acknowledge its resubmission on appeal.

If the petitioner's claims about the USSF A Coaching License are true, then such a license could constitute evidence of exceptional ability. The petitioner must, however, establish that these claims are true; we are under no obligation to presume the petitioner's claims are true. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of

proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

Because the petitioner has not corroborated its claims about the significance of the USSF A Coaching License, the petitioner has not met its burden of proof in this respect. We affirm the director's decision that the petitioner has not satisfied 8 C.F.R. § 204.5(k)(3)(ii)(C).

> *Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.* 8 C.F.R. § 204.5(k)(3)(ii)(F)

[redacted] stated that the beneficiary "has earned honors as both a player and a coach from peers and colleagues at the highest level of the sport." He discussed some of the beneficiary's achievements as a player at Berry College from 1996 to 2000, but the petitioner has also indicated that an injury ended the beneficiary's playing career. Because the classification is intended to secure prospective benefit to the United States, rather than reward past achievements, we cannot give substantial weight to accolades that the beneficiary earned in an activity that she no longer pursues. Furthermore, the petitioner has shown no reliable, direct correlation between playing skills and later success as a coach. Therefore, we must focus on the beneficiary's abilities as a coach.

[redacted] stated that the beneficiary "has been participating as a Coach in the Olympic Development program. . . . These players have the opportunity to be seen by multiple colleges and considered for scholarship opportunities. Some have the opportunity to represent the United States in the Olympics." The petitioner did not explain how the beneficiary's involvement in this program constitutes recognition for achievements and significant contributions to the field. [redacted] noted that the beneficiary "has coached more than 30 players in the program . . . [with] 2 advancing to national competition," but the athletic prowess of some of the petitioner's students is not recognition by peers, governmental entities, or professional or business associations. Success and recognition are not the same thing.

The petitioner submitted five witness letters. [redacted] asserted: "Letters from coaches and industry experts . . . provide further evidence of [the beneficiary's] recognition for achievements and significant contributions to the sport of soccer." We will discuss the letters later in this decision, in the context of the national interest waiver. For now, it will suffice to observe that witness letters, solicited for the express purpose of supporting the petition, do not amount to the formal recognition contemplated in the language of the regulations.

In denying the petition, the director stated: "letters solicited especially to support the petition do not constitute recognition for achievements and significant contributions to the field."

On appeal, counsel asserts that the witness letters are "best" considered as "comparable evidence" under 8 C.F.R. § 204.5(k)(3)(iii). We will return to this argument.

The regulatory standards at 8 C.F.R. § 204.5(k)(3)(ii) generally concern objective documentary evidence that exists independently of the petition. A given alien would have the same education, experience, and credentials whether or not they sought immigration benefits. Following this logic, recognition arising directly from an alien's work, such as awards or other public acknowledgment, receives strong preference over witness letters that exist only because the petitioner or the beneficiary solicited them. The purpose of the regulatory standards is to document an alien's accomplishments, rather than to summon new evidence into existence for the first time.

We agree with the director's finding that the petitioner has not established that the beneficiary meets the "evidence of recognition" standard at 8 C.F.R. § 204.5(k)(3)(ii)(F).

> *If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.* 8 C.F.R. § 204.5(k)(3)(iii).

The petitioner did not mention comparable evidence in the initial submission. In response to the RFE, [redacted] successor as director of the petitioning organization, stated: "The influence that an Athletic Director in a community sports facility like ours has on their field cannot be judged by the same standards as that of a coach or manager of a professional team or an Athletic Director of a college or university." The relevant question, however, is not whether we can compare the beneficiary's occupation to other, related occupations. The question is whether the regulatory standards at 8 C.F.R. § 204.5(k)(3)(ii) apply to the petitioner's occupation.

The director, in denying the petition, found that "the beneficiary's occupation . . . readily lends itself to the type of regulatory evidence to meet the [standard] criteria."

On appeal, counsel argues that the witness letters represent "comparable evidence" "because these statements represented strong, first hand proof of the exceptional attributes that [the beneficiary] brings to her position." Counsel does not explain why the standards at 8 C.F.R. § 204.5(k)(3)(ii) do not readily apply to the beneficiary's occupation, which is the only circumstance that permits consideration of "comparable evidence." Counsel denies that the petitioner is "seeking to substitute other, less probative evidence" in place of "objective evidence that we failed to submit," but the fact remains that the petitioner did not submit sufficient objective evidence to establish eligibility, and seeks to fill the gap with other evidence that falls outside the regulatory guidelines.

We agree with the director's finding that the standards listed at 8 C.F.R. § 204.5(k)(3)(ii) readily apply to the beneficiary's occupation, and therefore the petitioner's occupation does not trigger the "comparable evidence" clause at 8 C.F.R. § 204.5(k)(3)(iii).

In this instance, the petitioner has already claimed at various times that the beneficiary satisfies three of the six standards, and at least two others appear to apply to the occupation as well (8 C.F.R. §§ 204.5(k)(3)(ii)(B) and (D), which relate, respectively, to length of experience and compensation). If the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) readily apply to the beneficiary's occupation – which

appears to be the case here – then the petitioner cannot arbitrarily substitute new criteria tailored to the beneficiary's strengths simply because the beneficiary cannot meet the standard criteria. Furthermore, the "comparable evidence" must, itself, establish that the beneficiary's expertise significantly exceeds that ordinarily encountered in her occupation.

For the reasons discussed above, we agree with the director's finding that the petitioner has failed to establish that the beneficiary qualifies for classification as an alien of exceptional ability in the sciences, the arts or business.

The second and final question in this proceeding is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The director did not dispute the intrinsic merit of the beneficiary's occupation. We turn, next, to the issue of national scope. Published precedent provides illustrative examples:

> [P]ro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Matter of New York State Dept. of Transportation at 217, n.3.

The petitioner submitted general background documentation regarding the importance of exercise for good health, particularly in children and young adults. [redacted] stated: "the U.S. government has made increasing physical activity for all Americans a recognized national goal" (emphasis in original). This does not imply that the efforts of one athletic director are national in scope because they contribute toward that goal.

The petitioner cited various statistics about obesity, tobacco use, and other physical and psychological factors linked in some way to physical activity (or inactivity). The petitioner did not show that any one athletic director has altered, or could alter, these national statistics.

[redacted] stated that the beneficiary's "efforts on behalf of girls in the 16 – 18 year old age groups have resulted in the award of 45 college scholarships to these athletes. Many of these girls would not have had the opportunity to attend college without their soccer success." [redacted] anecdotal and unsupported claim does not establish a significant national effect in a population of over 300 million. Even if every athletic director could boast of comparable success, the resulting national effect would be cumulative rather than individual. [redacted] effectively acknowledged as much, stating that the beneficiary undertook her work "on behalf of the young athletes of Scottsdale, Arizona and the surrounding area."

In the January 29, 2009 RFE, the director requested "documentary evidence to establish that the beneficiary's work is/would be national in scope." In response, [redacted] questioned the director's interpretation of the phrase "national in scope," stating "it would be impossible for anyone other than an employee of a U.S. government agency or a program that was being implemented nation wide to qualify for a national interest waiver." As an example of such a program, [redacted] cited the Apollo moon landing program. The petitioner, here, has attacked a "straw man" version of the "national scope" requirement. An alien's work can have national scope in a number of ways. An alien researcher can publish a nationally-distributed journal article, influencing readers nationwide. An alien inventor's product can be sold nationally. An alien artist can entertain audiences or engage art enthusiasts throughout the country, while influencing countless other artists. Improved methods or processes can

serve as models for national implementation. (These are illustrative examples, rather than an exhaustive list.) The petitioner's artificial construction of national scope applying only to the federal government or "program[s]" does not reflect reality.

[redacted] referred to the beneficiary's "role in training future U.S. Olympians," but that label is, by nature, speculative. The petitioner has not shown that any of the beneficiary's past students have gone on to compete in the Olympics. The petitioner has not shown that participation in the Olympic Development Program (ODP) either guarantees a place on the Olympic team or is a prerequisite for consideration for that team.

In terms of athletics, an alien could have national scope through innovative coaching methods that others adopt nationwide, or by operating a nationally-known school that consistently produces Olympic-caliber athletes and draws students from around the country. In this instance, the petitioner has not claimed or demonstrated that athletes from other parts of the United States travel to Scottsdale in order to avail themselves of the beneficiary's services.

The petitioner's proposed standard, that an alien's work should "implement recognized national goals," is so loose and amorphous that it has little meaning. The overall importance of a given occupation already falls under the umbrella of "substantial intrinsic merit," and there has been no dispute that the beneficiary meets that test.

In denying the petition, the director found that the petitioner failed to establish the national scope of the beneficiary's occupation. On appeal, counsel repeats the argument that the beneficiary's work is national in scope because it is in furtherance of national goals. Counsel goes so far as to argue that the examples cited in *Matter of New York State Dept. of Transportation* of occupations lacking national scope are, in fact, national in scope, because *pro bono* legal services, education, and nutritious food all serve the national interest. The fallacy is that counsel, here, treats the terms "national in scope" and "national interest" interchangeably. USCIS, in *Matter of New York State Dept. of Transportation*, did not dispute that those issues are in the "national interest"; the examples illustrate that the work of one person in certain occupations in those fields does not, individually, have national scope.

We duly note counsel's assertion that "there can be well established national priorities that can only be achieved through efforts that are local," but counsel's interpretation of case law is not persuasive and does not supersede USCIS's interpretation.

Counsel's arguments amount to a concession that the beneficiary's work is national in scope only if we significantly redefine the term "national scope" to refer to any widely desired goal. We reject this interpretation, and we affirm the director's finding that the beneficiary's efforts, while in furtherance of national goals, are in themselves local in scope.

Apart from the issue of national scope, the petitioner must also establish the beneficiary's individual impact and influence on her field. The petitioner must establish not only that the beneficiary's

occupation benefits the United States, but also that it is in the national interest to ensure that the beneficiary, as an individual, engages in that occupation in the United States.

As noted previously, five witness letters accompanied the petitioner's initial submission. Many of their assertions address the general benefits of exercise and physical fitness, which do nothing to distinguish the beneficiary from others in her field. We will concentrate on assertions specific to the beneficiary and her impact on her field.

[redacted] head women's soccer coach at Phoenix College and director of goalkeeping at the Arizona ODP, stated:

> The [ODP] program identifies and develops youth players throughout the United States to represent their state associations, regions and the United States in soccer competition. The program . . . selects the best coaches in each region not only to improve the skills of these players but to enhance ideas and curriculum to ultimately improve soccer coaching at every level. The selection of [the beneficiary] . . . as a coach for the ODP program demonstrates that she is recognized by her peers as a top performer in her field. . . . In the short time she has been an ODP coach, [the beneficiary] has already played an instrumental role in the development and coaching of two players who were selected for the National Development Camp. The National Development Camp accepts only 80 players in the United States and provides training and support for future Olympians in U.S. soccer. . . .
>
> As Coach and Athletic Director at the [petitioning organization], [the beneficiary] is playing a vital role in increasing opportunities for the average child to gain the many benefits of participation in sports. . . .
>
> I believe it is important to mention the special, unique role [the beneficiary] is playing in attracting girls and young women into the sport and keeping them motivated. . . .
>
> There are numerous female athletic stars who would have no idea of how to impart their skills and love of the sport to others. For [the beneficiary], leading her teams seems to come naturally – a knack for understanding what individual players need and how to provide what is necessary to help her players excel. . . . In her years as a player and a college coach, she also developed first hand knowledge of how athletes react to various training techniques. . . . Her ability to synthesize these experiences translates to a level of coaching and leadership that sets [the beneficiary] apart from her peers . . . .

[redacted] essentially argues that the beneficiary's abilities distinguish her from her peers. In essence, he argues that the beneficiary possesses exceptional ability in her field. As we have already observed, exceptional ability does not establish eligibility for the additional benefit of the national interest waiver. [redacted] did not explain how the beneficiary's individual efforts directly serve the national interest (as opposed to the more limited interest of female teenage soccer players in the Scottsdale area).

[redacted], head women's soccer coach at Berry College and an ODP coach, praised the beneficiary's "instinctive grasp of coaching techniques and player development." Being a qualified coach does not automatically establish eligibility for the waiver. The petitioner must show how the beneficiary stands out from others in her occupation.

[redacted] stated:

> She is committed to developing and managing programs at her facility that will inspire children to achieve the level of success that is right for them – whether they play at the competitive level or just for exercise and fun. As such, she has introduced innovative programs ranging from sessions . . . for 3 – 5 year olds to a special preparatory program for college bound athletes. . . . She understands the special value of participation in sports for girls and young women. Extensive research has demonstrated that participation in sports can prevent high risk behaviors and help girls develop a positive self image and the confidence that they can succeed not just on the playing field but also in life. [The beneficiary] has made it her mission to introduce the sport of soccer to more girls and young women and provide the personal attention that many girls need to stay motivated through adolescence. . . . The unprecedented growth in the number of teams that her facility sponsors and the continuing increases in opportunities for participation that have been made available for recreational as well as competitive athletes under her leadership is strong evidence of [the beneficiary's] success and her ability to benefit U.S. national interests both now and in the future.

[redacted], who described herself as a volunteer at the petitioning soccer club, stated:

> About three years ago my daughter . . . played on one of [the beneficiary's] teams. I served as Team Manager and was responsible for all administrative duties for the team. This gave me the chance to work directly with [the beneficiary] and see first hand that what she is giving to her teams is much more than the fundamentals of soccer.

[redacted] praised the beneficiary's "role in motivating girls and young women to reach for their best." [redacted] credited the beneficiary with helping her players "overcome self consciousness," "pull their grades up" and "discover[] that exercise could be fun."

[redacted] the school nurse of Cherokee Elementary School, Scottsdale, Arizona, and the mother of one of the beneficiary's former players, stated that the beneficiary's "players grow in focus and commitment that they take with them into every other aspect of their lives." She also noted that exercise is one remedy for the "childhood obesity crisis in America."

[redacted] director of sports performance training for the Athletes Xcel Program at Spooner Physical Therapy, Scottsdale, Arizona, stated:

> In my role as [redacted] I work closely with the professional staff at the [petitioning] Soccer Club to design programs that are specific and appropriate to the sport of soccer. . . . Our work with the Blackhawks has given me the opportunity to interact with [the beneficiary] and observe first hand the unique contributions she is making to the lives of young athletes at the same time she is advancing America's interests in raising the fitness level of young people and expanding exercise opportunities for girls and young women.

cited national statistics on childhood obesity and then asserted that the beneficiary's work "is a perfect example of the kind of efforts and programs that American communities need as part of a comprehensive national initiative to fight childhood obesity." By the same logic, every local H1N1 vaccination program is part of the national initiative to curb the spread of that strain of influenza, but it does not follow that every local administrator of such a program merits a national interest waiver.

[redacted] stated that the beneficiary's impact "is not speculative," and noted that "enrollment in the Club's programs went from 3500 to 3750 for the 2007 season." He did not claim, much less demonstrate, that the beneficiary's work has had a measurable impact on childhood obesity or other problems in the Scottsdale area, even though obesity statistics form a cornerstone of the petitioner's waiver claim. If the beneficiary supposedly deserves a national interest waiver in order to stem the tide of obesity in American youth, then such a claim demands, at the very least, evidence of the beneficiary's past success in this area. Figures showing increased soccer team membership cannot suffice in this regard, because those figures do not establish the obesity rates of the players.

The claims in the witnesses' letters do not establish that the beneficiary has had, or is likely to have, a significant impact outside of a subset of clientele of one local athletic facility.

In the RFE, the director instructed the petitioner to "submit any documentary evidence to establish that the beneficiary has a past record of specific prior achievement that justifies projections of future benefit to the national interest." The director stated that the evidence "must establish, in some capacity, her ability to serve the national interest to a substantially greater extent than the majority of her peers" and show the beneficiary's "influence on the field."

In response to the RFE, the petitioner repeated prior claims and submitted new copies of previously submitted evidence. [redacted] asserted that the beneficiary stands apart from her peers because she has earned "some of the highest honors a woman can earn in the sport of soccer," but the record contains little documentation to support this claim. [redacted] also stated that success as an athlete does not necessarily translate into skill as a coach, which is one reason why we do not give enormous weight to the petitioner's frequent emphasis on the beneficiary's success as an athlete.

The director acknowledged that "the beneficiary is a highly respected youth soccer coach in her community; however, the record does not persuasively demonstrate that the beneficiary's contributions

in the field are of such unusual significance that the beneficiary merits the special benefit of a national interest waiver."

On appeal, counsel cites various publications regarding childhood obesity, exercise, health and related issues. As with the petitioner's previous submissions, counsel cites no information to show that the beneficiary's work has had a statistically significant effect on child health even at the local level, let alone nationally. Counsel states: "the documentation submitted shows more than just the fact that [the beneficiary] is working in an area of substantial intrinsic merit. The evidence provided confirms that there is a strong U.S. government interest in efforts that increase physical activity for young people." The second sentence, however, simply restates the first. The federal government supports physical activity because of the intrinsic merit of such activity.

We need not take issue with counsel's assertion that "community based athletic programs are . . . a key tool in improving health," because that assertion does not in any way imply that it is in the national interest to waive the standard job offer/labor certification requirement for the beneficiary. The importance of such programs hinges on their intrinsic and cumulative value, not on the involvement of one athletic director in one community.

Congress created no blanket waiver for community-level athletic directors, and we will not construe general arguments about children's health to imply the existence of such a blanket waiver. The petitioner has not established that the beneficiary qualifies as an alien of exceptional ability in the sciences, the arts or business, much less distinguished the beneficiary from others in her field to an extent that would justify the special benefit of the national interest waiver – an exemption from requirements that, by statute, typically apply to aliens in the beneficiary's occupation.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.